

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED

JUN 07 2019

Clerk, U.S. District Court
District Of Montana
Missoula

KSANKA KUPAQA XA'ŁĆIN, et al.,

CV 19-20-M-DWM

Plaintiffs,

vs.

ORDER

UNITED STATES FISH AND
WILDLIFE SERVICE, et al.,

Defendants,

and

RC RESOURCES, INC.,

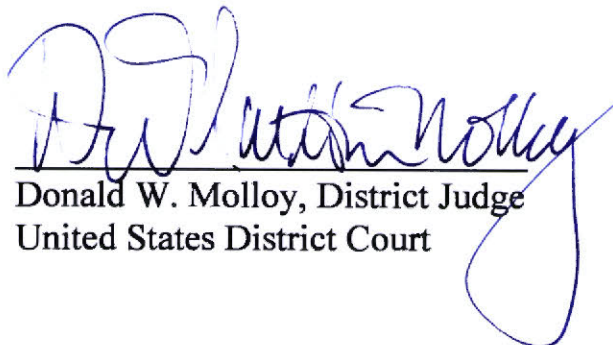
Defendant-Intervenor.

This suit alleges the U.S. Fish and Wildlife Service and U.S. Forest Service violated the Endangered Species Act ("ESA") by approving the Rock Creek Mine in the Cabinet Mountains. Defendants request a stay so they can review the decisional documents challenged in this case. (Doc. 26.) Specifically, Defendants are assessing the impact of events that have occurred since those documents were completed. They argue a stay is necessary because the review may result in the amendment, supplementation, or withdrawal of the documents, which could affect this litigation.

Defendants are free to withdraw or amend their decisional documents at any time. But they cannot delay ongoing litigation to shore up the administrative record or search for post-hoc rationalizations based on new information. *See Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, 450 F.3d 930, 943 (9th Cir. 2006). Unless and until the documents are withdrawn or amended, Defendants must defend against the existing allegations. Accordingly,

IT IS ORDERED that Defendants' Motion to Stay (Doc. 26) is DENIED. A scheduling order based on the parties' proposed case management plan is forthcoming.

DATED this 7th day of June, 2019.


Donald W. Molloy, District Judge
United States District Court